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HARVEST REDWOOD RETIREMENT RESIDENCE,  
8 L.L.C., doing business as Redwood Retirement Residence,  
RETIREMENT RESIDENCE, L.L.C.; and HOLIDAY  
9 RETIREMENT CORP.

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12

13 GREATER NAPA FAIR HOUSING  
14 CENTER, a California Not for Profit  
Corporation, doing business as FAIR  
15 HOUSING NAPA VALLEY, as an  
individual entity only; EVA NORTHERN,  
16 an incompetent adults, by and through her  
Guardian ad Litem, NANCY  
17 NORTHERN; MARIE BROMAN; and AL  
FOURNIER, each individually and on  
18 behalf of individuals similarly situated;  
NANCY NORTHERN, in her individual  
19 capacity only; and LOUISE WHITAKER,  
in her individual capacity and as Successor  
20 in Interest to Ruby Duncan,

21 Plaintiffs,

22 v.

23 HARVEST REDWOOD RETIREMENT  
RESIDENCE, L.L.C., doing business as  
24 Redwood Retirement Residence;  
REDWOOD RETIREMENT RESIDENCE  
25 L.L.C.; and HOLIDAY RETIREMENT  
CORP.,

26 Defendants.  
27  
28

No. C 07 3652 PJH

**ANSWER TO FIRST AMENDED  
COMPLAINT**

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1 Defendants Harvest Redwood Retirement Residence, LLC, Redwood Retirement  
2 Residence, Redwood Retirement Residence LLC, and Holiday Retirement Corporation  
3 (hereinafter "Defendants") hereby answer the Complaint of Greater Napa Fair Housing Center, et  
4 al. (hereinafter "Plaintiffs") and state as follows:

5 **I. INTRODUCTION**

6 1. Defendants neither admit nor deny the allegations contained in Paragraph 1 of the  
7 Complaint for the reason that such allegations are legal conclusions to which no answer is  
8 required. To the extent that an answer is required, Defendants admit that Redwood Retirement  
9 Residence is located at 2350 Redwood Road in Napa, California. Except as expressly admitted,  
10 Defendants deny each and every allegation contained in Paragraph 1 of Plaintiffs' Complaint.

11 **II. JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

12 2. Defendants neither admit nor deny the allegations contained in Paragraph 2 of the  
13 Complaint for the reason that such allegations are legal conclusions to which no answer is  
14 required. To the extent that an answer is required, Defendants admit that this Court has federal  
15 question jurisdiction over Plaintiffs' "federal Fair Housing Act" claim. Except as expressly  
16 admitted, Defendants deny each and every allegation contained in Paragraph 2 of Plaintiffs'  
17 Complaint.

18 3. Defendants admit that venue in this District is appropriate. Except as expressly  
19 admitted, Defendants deny each and every allegation contained in Paragraph 3 of Plaintiffs'  
20 Complaint.

21 **III. PARTIES**

22 4. Defendants are without knowledge or information sufficient to form a belief as to  
23 the truth of the material allegations in Paragraph 4 of Plaintiffs' Amended Complaint and, on that  
24 basis, deny those allegations.

25 5. Defendants are without knowledge or information sufficient to form a belief as to  
26 the truth of the material allegations in Paragraph 5 of Plaintiffs' Amended Complaint and, on that  
27 basis, deny those allegations.

28 6. Defendants admit that the Court issued an order dated October 10, 2007,

1 permitting Mae Louise Whitaker to be substituted as plaintiff in this action in place of her mother,  
2 Ruby Duncan and that Ms. Whitaker purports to bring this action as the successor in interest of  
3 Ms. Duncan. Defendant admits that Ms. Duncan occupied Unit 110 from July 15, 1991 to  
4 September 26, 2002. Defendant also admits that Ms. Duncan entered into an agreement to rent  
5 Unit 209 on June 5, 2003, and occupied that unit until her death on or about July 11, 2007.  
6 Defendants further admit that Ms. Duncan was 100 years old on or about January 19, 2007.  
7 Defendants affirmatively allege that Ms. Duncan was not at any time served with an eviction  
8 notice nor did she receive any correspondence from Defendants that declared an intent to evict  
9 her. Except as so expressly admitted and alleged, Defendants are without knowledge or  
10 information sufficient to form a belief as to the truth of the material allegations in Paragraph 6 of  
11 Plaintiffs' Amended Complaint and, on that basis, deny those allegations.

12 7. Defendants admit that Eva Northern entered into an agreement to rent Unit 112 at  
13 Redwood Retirement Residence on January 20, 2001, and occupied that unit on or about April 13,  
14 2007. Defendants affirmatively allege that Plaintiff Northern was not at any time served with an  
15 eviction notice nor did she receive any correspondence from Defendants that declared an intent to  
16 evict her. Except as expressly admitted and alleged, Defendants are without knowledge or  
17 information sufficient to form a belief as to the truth of the material allegations in Paragraph 7 of  
18 Plaintiffs' Amended Complaint and, on that basis, deny those allegations.

19 8. Defendants are without knowledge or information sufficient to form a belief as to  
20 the truth of the material allegations in Paragraph 8 of Plaintiffs' Amended Complaint and, on that  
21 basis, deny those allegations.

22 9. Defendants admit that Marie Broman is a resident of Redwood Retirement  
23 Residence. Defendants also admit that Plaintiff Broman entered into an agreement to rent Unit  
24 212 on September 16, 2001, and continues to reside in that unit. Defendants affirmatively allege  
25 that Plaintiff Broman was not at any time served with an eviction notice nor has she received any  
26 correspondence from Defendants that declares an intent to evict her. Except as expressly  
27 admitted and alleged, Defendants are without knowledge or information sufficient to form a  
28 belief as to the truth of the material allegations in Paragraph 9 of Plaintiffs' Amended Complaint

1 and, on that basis, deny those allegations.

2 10. Defendants admit that Al Fournier is a resident of Redwood Retirement Residence.  
3 Defendants also admit that Plaintiff Fournier entered into an agreement to rent Unit 127 on May  
4 5, 2003, and continues to reside in that unit. Defendants affirmatively allege that Plaintiff  
5 Fournier was not at any time served with an eviction notice nor has he received any  
6 correspondence from Defendants that declares an intent to evict him. Except as expressly  
7 admitted and alleged, Defendants are without knowledge or information sufficient to form a  
8 belief as to the truth of the material allegations in Paragraph 10 of Plaintiffs' Amended Complaint  
9 and, on that basis, deny those allegations.

10 11. Defendants admit that Redwood Retirement Residence has 97 units and is located  
11 at 2350 Redwood Road in Napa, California. Defendants further admit that Redwood Retirement  
12 Residence offers housing that fits within the definitions contained in 42 U.S.C. section 3607(b),  
13 42 U.S.C. section 3602(b) and California Government Code section 12927(d). Except as  
14 expressly admitted and alleged, Defendants deny each and every remaining material allegation in  
15 Paragraph 11 of Plaintiffs' Amended Complaint.

16 12. Defendants admit the material allegations contained in Paragraph 12 of Plaintiffs'  
17 Amended Complaint.

18 13. Defendants admit the material allegations contained in Paragraph 13 of Plaintiffs'  
19 Amended Complaint.

20 14. Defendants admit that Holiday Retirement Corp., which recently changed its legal  
21 name to "HRC Investors Corp.," is a corporation that has been registered to do business in the  
22 State of California with a primary business address in Salem, Oregon. Except as expressly  
23 admitted, Defendants deny each and every remaining material allegation in Paragraph 14 of  
24 Plaintiffs' Amended Complaint.

25 15. Defendants neither admit nor deny the allegations contained in Paragraph 15 of  
26 Plaintiffs' Amended Complaint for the reason that such allegations are legal conclusions to which  
27 no answer is required. To the extent that an answer is required, Defendants deny each and every  
28 remaining material allegation in Paragraph 15 of Plaintiffs' Amended Complaint.

1           16. Defendants neither admit nor deny the allegations contained in Paragraph 16 of  
2 Plaintiffs' Amended Complaint for the reason that such allegations are legal conclusions to which  
3 no answer is required. To the extent that an answer is required, Defendants deny each and every  
4 material allegation in Paragraph 16 of Plaintiffs' Amended Complaint.

5           17. Defendants deny each and every material allegation in Paragraph 17 of Plaintiffs'  
6 Amended Complaint.

#### 7                                   IV. CLASS ACTION ALLEGATIONS

##### 8           A. DISABILITY CLASS

9           18. Defendants neither admit nor deny the allegations contained in Paragraph 18 of  
10 Plaintiffs' Amended Complaint for the reason that such allegations are legal conclusions to which  
11 no answer is required. To the extent that an answer is required, Defendants deny each and every  
12 material allegation in Paragraph 18 of Plaintiffs' Amended Complaint.

13           19. Defendants deny each and every material allegation in Paragraph 19 of Plaintiffs'  
14 Amended Complaint.

15           20. Defendants deny each and every material allegation in Paragraph 20 of Plaintiffs'  
16 Amended Complaint.

17           21. Defendants deny each and every material allegation in Paragraph 21 of Plaintiffs'  
18 Amended Complaint. Defendants affirmatively allege that they reasonably accommodate persons  
19 with disabilities.

20           22. Defendants deny each and every material allegation in Paragraph 22 of Plaintiffs'  
21 Amended Complaint.

22           23. Defendants deny each and every material allegation in Paragraph 23 of Plaintiffs'  
23 Amended Complaint.

24           24. Defendants deny each and every material allegation in Paragraph 24 of Plaintiffs'  
25 Amended Complaint.

##### 26           B. SECURITY DEPOSIT CLASS

27           25. Defendants deny each and every material allegation in Paragraph 25 of Plaintiffs'  
28 Amended Complaint.

1           26.     Defendants deny each and every material allegation in Paragraph 26 of Plaintiffs'  
2 Amended Complaint.

3           27.     Defendants deny each and every material allegation in Paragraph 27 of Plaintiffs'  
4 Amended Complaint.

5           28.     Defendants deny each and every material allegation in Paragraph 28 of Plaintiffs'  
6 Amended Complaint.

7           29.     Defendants deny each and every material allegation in Paragraph 29 of Plaintiffs'  
8 Amended Complaint.

9           30.     Defendants deny each and every material allegation in Paragraph 30 of Plaintiffs'  
10 Amended Complaint.

11          31.     Defendants deny each and every material allegation in Paragraph 31 of Plaintiffs'  
12 Complaint.

13           **V.     FACTS UNDERLYING THE CLAIMS OF THE CLASSES AND SUBCLASS**

14           **A.     INTRODUCTION**

15          32.     Defendants deny each and every material allegation in Paragraph 32 of Plaintiffs'  
16 Amended Complaint.

17          33.     Defendants deny each and every material allegation in Paragraph 33 of Plaintiffs'  
18 Amended Complaint.

19          34.     Defendants deny each and every material allegation in Paragraph 34 of Plaintiffs'  
20 Amended Complaint.

21          35.     Defendants deny each and every material allegation in Paragraph 35 of Plaintiffs'  
22 Complaint.

23          36.     Defendants deny each and every material allegation in Paragraph 36 of Plaintiffs'  
24 Complaint.

25          37.     Defendants deny each and every material allegation in Paragraph 37 of Plaintiffs'  
26 Complaint.

27          38.     Defendants deny each and every material allegation in Paragraph 38 of Plaintiffs'  
28 Complaint.

**B. FACTS UNDERLYING THE CLAIMS OF MAE LOUISE WHITAKER,  
INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO DECEASED  
PLAINTIFF RUBY DUNCAN**

39. Defendants admit and affirmatively allege that Ruby Duncan occupied a unit at Redwood Retirement Residence between approximately May 1991 and September 2002. Except as so admitted and alleged, Defendants deny each and every remaining material allegation in Paragraph 39 of Plaintiffs' Amended Complaint.

40. Defendants admit that on June 5, 2003, Ruby Duncan entered into an agreement to occupy Unit 209, which is a studio unit with one bathroom. Defendants also admit that the original monthly rate was \$1,695. Defendants further admit that the monthly rate was raised to \$1,955.00 on July 1, 2007. Defendants further admit and affirmatively allege that the rate included three meals a day, weekly housekeeping, linen changing, scheduled social activity and fitness programs and scheduled transportation services. Defendants affirmatively allege that the unit contains no cooking facilities and that no cooking utensils or equipment are provided to residents by Defendants. Defendants also admit that Plaintiff Duncan passed away on or about July 11, 2007. Except as so admitted and affirmatively alleged, Defendants deny each and every remaining material allegation in Paragraph 40 of Plaintiffs' Amended Complaint.

41. Defendants admit that on June 5, 2003, Plaintiff Duncan signed an addendum in which she agreed to pay a one-time fee, which at that time was called a "signing fee," of \$847.50. Defendants further admit and allege that the addendum states that the fee was fully refunded only if she moved out within thirty (30) days of occupancy, and that she would receive no refund if she moved out after ninety (90) days. Defendants affirmatively allege there is no record that Plaintiff Duncan ever paid that fee. Except as so admitted and alleged, Defendants deny each and every remaining material allegation in Paragraph 41 of Plaintiffs' Amended Complaint.

42. Defendants admit they are aware Plaintiff Duncan had a private duty caregiver or companion. Except as so admitted, Defendants are without knowledge or information sufficient to form a belief as to the truth of the material allegations in Paragraph 42 of Plaintiffs' Amended Complaint and, on that basis, deny those allegations.

43. Defendants admit that Redwood Retirement Residence has a policy related to meal



1 trays. Except as so admitted, Defendants deny each and every remaining material allegation in  
2 Paragraph 43 of Plaintiffs' Amended Complaint.

3 44. Defendants deny each and every material allegation in Paragraph 44 of Plaintiffs'  
4 Amended Complaint.

5 45. Defendants admit that at some point in December 2006 or January 2007, Plaintiff  
6 Whitaker spoke with a Redwood Retirement Residence manager about meal trays. Except as so  
7 admitted, Defendants deny each and every material allegation in Paragraph 45 of Plaintiffs'  
8 Amended Complaint.

9 46. Defendants admit that Redwood Retirement Residence received a letter from Dr.  
10 Paul Sweigert dated January 30, 2007, relating to Plaintiff Duncan. Except as so admitted,  
11 Defendants deny each and every remaining material allegation in Paragraph 46 of Plaintiffs'  
12 Amended Complaint.

13 47. Defendants deny each and every material allegation in Paragraph 47 of Plaintiffs'  
14 Amended Complaint.

15 48. Defendants are without knowledge or information sufficient to form a belief as to  
16 the truth of the material allegations in Paragraph 48 of Plaintiffs' Complaint and, on that basis,  
17 deny those allegations.

18 **C. FACTS UNDERLYING THE CLAIMS OF EVA NORTHERN AND NANCY**  
19 **NORTHERN.**

20 49. Defendants are without knowledge or information sufficient to form a belief as to  
21 the truth of the material allegations in Paragraph 49 of Plaintiffs' Complaint and, on that basis,  
22 deny those allegations.

23 50. Defendants admit that on January 20, 2001, Plaintiff Eva Northern entered into an  
24 agreement to occupy Unit 112 at Redwood Retirement Residence. Defendants further admit that  
25 Unit 112 has a small refrigerator and sink. Defendants admit that as of February 1, 2007, the base  
26 rate for that unit was \$2,735.00 per month. Defendants affirmatively allege that beginning in  
27 January 2007, Plaintiff Eva Northern received a \$300.00 per month discount for meals not taken.  
28 Defendants further admit and affirmatively allege that the rate included three meals a day, weekly



1 housekeeping, linen changing, scheduled social activity and fitness programs and scheduled  
2 transportation services. Defendants affirmatively allege that the unit contains no cooking  
3 facilities and that no cooking utensils or equipment are provided to residents by Defendants.  
4 Defendants also admit that on March 14, 2007, Plaintiff Nancy Northern provided notice to  
5 Redwood Retirement Residence that her mother was moving out, and further admits that Plaintiff  
6 Eva Northern moved out of the unit on March 15, 2007. Except as so admitted and affirmatively  
7 alleged, Defendants deny each and every remaining material allegation in Paragraph 50 of  
8 Plaintiffs' Complaint.

9 51. Defendants admit they are aware that Plaintiff Eva Northern had a private duty  
10 caregiver or companion. Except as so admitted, Defendants are without knowledge or  
11 information sufficient to form a belief as to the truth of the material allegations in Paragraph 51 of  
12 Plaintiffs' Amended Complaint and, on that basis, deny those allegations.

13 52. Defendants admit that Redwood Retirement Residence has a policy related to meal  
14 trays. Defendants also admit that Plaintiff is in possession of a document containing the quoted  
15 language, as alleged in Paragraph 52 of Plaintiffs' Amended Complaint. Except as so admitted,  
16 Defendants are without knowledge or information sufficient to form a belief as to the truth of the  
17 material allegations in Paragraph 52 of Plaintiffs' Amended Complaint and, on that basis, deny  
18 each and every remaining material allegation.

19 53. Defendants admit that Plaintiff is in possession of a document containing the  
20 quoted language, as alleged in Paragraph 53 of Plaintiffs' Amended Complaint.

21 54. Defendants admit and affirmatively allege that they reasonably accommodate  
22 residents of Redwood Retirement Residence and that Redwood Retirement Residence allowed  
23 Plaintiff Eva Northern to eat in her room for some period of time as such an accommodation.  
24 Except as so admitted, Defendants deny each and every remaining material allegation in  
25 Paragraph 54 of Plaintiffs' Amended Complaint.

26 55. Defendants are without knowledge or information sufficient to form a belief as to  
27 the truth of the material allegations in Paragraph 55 of Plaintiffs' Amended Complaint and, on  
28 that basis, deny each and every material allegation.

1           56. Defendants admit and affirmatively allege that they reasonably accommodate  
2 residents of Redwood Retirement Residence who have disabilities and that Redwood Retirement  
3 Residence allowed Plaintiff Eva Northern to receive meals in her room for some period of time as  
4 such an accommodation. Defendants affirmatively allege that there is no record that Plaintiff Eva  
5 Northern was ever required to pay for a meal tray. Except as so admitted, Defendants deny each  
6 and every remaining material allegation in Paragraph 56 of Plaintiffs' Amended Complaint.

7           57. Defendants admit that Tom Ahrens is a regional director and that Redwood  
8 Retirement Residence is one of the facilities in his region. Defendants also admit that Redwood  
9 Retirement Residence had a meal tray policy. Defendants affirmatively allege that they  
10 reasonably accommodate residents of Redwood Retirement Residence who have disabilities.  
11 Except as so admitted and alleged, Defendants deny each and every remaining material allegation  
12 in Paragraph 57 of Plaintiffs' Amended Complaint.

13           58. Defendants admit Redwood Retirement Residence had a meal tray policy.  
14 Defendants also admit Plaintiff Nancy Northern requested reimbursement for meals not taken by  
15 Plaintiff Eva Northern. Defendants affirmatively allege that Plaintiff Eva Northern received a  
16 monthly rent reduction for meals not taken in the dining room beginning on January 8, 2007.  
17 Defendants affirmatively allege that this discount was provided despite the fact that service costs,  
18 including meals, are fixed. Defendants also affirmatively allege that they reasonably  
19 accommodate residents of Redwood Retirement Residence who have disabilities. Except as so  
20 admitted and alleged, Defendants deny each and every remaining material allegation in Paragraph  
21 58 of Plaintiffs' Amended Complaint.

22           59. Defendants are without knowledge or information sufficient to form a belief as to  
23 the truth of the material allegations in Paragraph 59 of Plaintiffs' Amended Complaint and, on  
24 that basis, deny each and every material allegation.

25           60. Defendants deny that Mr. Ahrens made "comments indicating that people with  
26 disabilities are not welcome at the Redwood Retirement Residence." As to the remaining  
27 allegations, Defendants are without knowledge or information sufficient to form a belief as to the  
28 truth of the material allegations in Paragraph 60 of Plaintiffs' Amended Complaint and, on that

1 basis, deny each and every remaining material allegation.

2 61. Defendants admit that on March 14, 2007, Plaintiff Nancy Northern informed  
3 Redwood Retirement Residence that Plaintiff Eva Northern would move out of Unit 112 on  
4 March 15, 2007. Defendants also admit that Plaintiff Nancy Northern informed Redwood  
5 Retirement Residence that Plaintiff Eva Northern was moving to Aegis. Defendants admit that  
6 assisted living, such as that provided by Aegis, generally is substantially more expensive than  
7 Redwood Retirement Residence. Except as so admitted, Defendants are without knowledge or  
8 information sufficient to form a belief as to the truth of the remaining material allegations in  
9 Paragraph 61 of Plaintiffs' Amended Complaint and, on that basis, deny each and every material  
10 allegation.

11 62. Defendants are without knowledge or information sufficient to form a belief as to  
12 the truth of the material allegations in Paragraph 62 of Plaintiffs' Amended Complaint and, on  
13 that basis, deny each and every material allegation.

14 **D. THE FACTS UNDERLYING THE CLAIM OF MARIE BROMAN**

15 63. Defendants admit that on September 16, 2001, Plaintiff Broman entered into an  
16 agreement to occupy Unit 212 at Redwood Retirement Residence. Defendants further admit that  
17 Plaintiff Broman continues to reside in Unit 212. Defendants admit that as of July 1, 2007, the  
18 rate for that unit is \$2,280.00 per month. Defendants further admit and affirmatively allege that  
19 the rate includes three meals a day, weekly housekeeping, linen changing, scheduled social  
20 activity and fitness programs and scheduled transportation services. Defendants affirmatively  
21 allege that the unit contains no cooking facilities and that no cooking utensils or equipment are  
22 provided to residents by Defendants. Except as so admitted and affirmatively alleged, Defendants  
23 deny each and every remaining material allegation in Paragraph 63 of Plaintiffs' Amended  
24 Complaint.

25 64. Defendants admit that on September 16, 2001, Plaintiff Broman signed an  
26 addendum in which she agreed to pay a one-time fee, which at that time was called a "signing  
27 fee," of \$975.00. Defendants further admit and allege that the addendum states that the fee was  
28 fully refunded only if she moved out within thirty (30) days of occupancy, and that she would

1 receive no refund if she moved out after ninety (90) days. Except as so admitted and alleged,  
2 Defendants deny each and every remaining material allegation in Paragraph 41 of Plaintiffs'  
3 Amended Complaint.

4 65. Defendants are without knowledge or information sufficient to form a belief as to  
5 the truth of the material allegations in Paragraph 65 of Plaintiffs' Amended Complaint and, on  
6 that basis, deny each and every material allegation.

7 66. Defendants admit that they had a meal tray policy. Except as so expressly  
8 admitted, Defendants are without knowledge or information sufficient to form a belief as to the  
9 truth of the material allegations in Paragraph 66 of Plaintiffs' Amended Complaint and, on that  
10 basis, deny each and every material allegation.

11 67. Defendants admit that they had a meal tray policy. Except as so expressly  
12 admitted, Defendants are without knowledge or information sufficient to form a belief as to the  
13 truth of the material allegations in Paragraph 67 of Plaintiffs' Amended Complaint and, on that  
14 basis, deny each and every material allegation.

15 **E. THE FACTS UNDERLYING THE CLAIM OF AL FOURNIER**

16 68. Defendants admit that on May 5, 2003, Plaintiff Fournier entered into an  
17 agreement to occupy Unit 127 at Redwood Retirement Residence, and that his move-in date was  
18 on or about May 8, 2003. Defendants further admit that Plaintiff Fournier continues to reside in  
19 Unit 212. Defendants admit that as of July 1, 2007, the rate for that unit was \$2,865.00 per  
20 month. Defendants further admit and affirmatively allege that the rate included three meals a day,  
21 weekly housekeeping, linen changing, scheduled social activity and fitness programs and  
22 scheduled transportation services. Defendants affirmatively allege that the unit contains no  
23 cooking facilities and that no cooking utensils or equipment are provided to residents by  
24 Defendants. Except as so admitted and affirmatively alleged, Defendants are without knowledge  
25 or information sufficient to form a belief as to the truth of the material allegations in Paragraph 68  
26 of Plaintiffs' Amended Complaint and, on that basis, deny each and every material allegation.

27 69. Defendants admit that on May 5, 2003, Plaintiff Fournier signed an addendum in  
28 which he agreed to pay a one-time fee, which at that time was called a "signing fee," of

1 \$1,247.50. Defendants further admit and allege that the addendum states that the fee was fully  
2 refunded only if he moved out within thirty (30) days of occupancy, and that he would receive no  
3 refund if he moved out after ninety (90) days. Except as so admitted and alleged, Defendants  
4 deny each and every remaining material allegation in Paragraph 69 of Plaintiffs' Amended  
5 Complaint.

6 70. Defendants are without knowledge or information sufficient to form a belief as to  
7 the truth of the material allegations in Paragraph 70 of Plaintiffs' Amended Complaint and, on  
8 that basis, deny each and every material allegation.

9 71. Defendants admit that they had a meal tray policy. Except as so expressly  
10 admitted, Defendants are without knowledge or information sufficient to form a belief as to the  
11 truth of the material allegations in Paragraph 71 of Plaintiffs' Amended Complaint, and, on that  
12 basis, deny each and every material allegation.

13 72. Defendants admit that some residents received move-out notices in 2006 and 2007.  
14 Except as so expressly admitted, Defendants are without knowledge or information sufficient to  
15 form a belief as to the truth of the material allegations in Paragraph 72 of Plaintiffs' Amended  
16 Complaint, and, on that basis, deny each and every material allegation.

17 **F. THE INVOLVEMENT OF FAIR HOUSING NAPA VALLEY**

18 73. Defendants are without knowledge or information sufficient to form a belief as to  
19 the truth of the material allegations in Paragraph 73 of Plaintiffs' Amended Complaint and, on  
20 that basis, deny those allegations.

21 74. Defendants admit that some residents received move-out notices in 2006 and 2007.  
22 Defendants are without knowledge or information sufficient to form a belief as to the truth of the  
23 material allegations in Paragraph 74 of Plaintiffs' Amended Complaint and, on that basis, deny  
24 those allegations.

25 75. Defendants are without knowledge or information sufficient to form a belief as to  
26 the truth of the material allegations in Paragraph 75 of Plaintiffs' Amended Complaint and, on  
27 that basis, deny those allegations.

28 76. Defendants are without knowledge or information sufficient to form a belief as to

1 the truth of the material allegations in Paragraph 76 of Plaintiffs' Amended Complaint and, on  
2 that basis, deny each and every material allegation.

3 77. Defendants admit that some residents received notices from Fair Housing Napa  
4 Valley in June and July of 2007. Except as so admitted, Defendants deny each and every  
5 remaining material allegation in Paragraph 77 of Plaintiffs' Amended Complaint.

## 6 **G. INJURIES**

7 78. Defendants deny each and every material allegation in Paragraph 78 of Plaintiffs'  
8 Amended Complaint.

9 79. Defendants deny each and every material allegation in Paragraph 79 of Plaintiffs'  
10 Amended Complaint.

11 80. Defendants deny each and every material allegation in Paragraph 80 of Plaintiffs'  
12 Amended Complaint.

13 81. Defendants deny each and every material allegation in Paragraph 81 of Plaintiffs'  
14 Amended Complaint.

15 82. Defendants deny each and every material allegation in Paragraph 82 of Plaintiffs'  
16 Amended Complaint.

17 83. Defendants deny each and every material allegation in Paragraph 83 of Plaintiffs'  
18 Amended Complaint.

19 84. Defendants deny each and every material allegation in Paragraph 84 of Plaintiffs'  
20 Amended Complaint.

21 85. Defendants deny each and every material allegation in Paragraph 85 of Plaintiffs'  
22 Amended Complaint.

## 23 **VI. CLAIMS**

### 24 **A. FIRST CLAIM [FAIR HOUSING ACT]**

#### 25 **Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants**

26 86. Defendants incorporate by reference their response to the allegations in Paragraphs  
27 1 through 85 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

28 87. Defendants deny each and every material allegation in Paragraph 87 of Plaintiffs'

Amended Complaint.

**B. SECOND CLAIM [CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT]  
Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants**

88. Defendants incorporate by reference their response to the allegations in Paragraphs 1 through 87 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

89. Defendants deny each and every material allegation in Paragraph 89 of Plaintiffs' Amended Complaint.

**C. THIRD CLAIM [CALIFORNIA UNRUH CIVIL RIGHTS ACT]  
Disability Class Plaintiffs and Individual Plaintiffs v. Defendants**

90. Defendants incorporate by reference their response to the allegations in Paragraphs 1 through 89 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

91. Defendants deny each and every material allegation in Paragraph 91 of Plaintiffs' Amended Complaint.

92. Defendants deny each and every material allegation in Paragraph 92 of Plaintiffs' Amended Complaint.

**D. FOURTH CLAIM [DISABLED PERSONS ACT]  
Disability Class Plaintiffs Only v. Defendants**

93. Defendants incorporate by reference their response to the allegations in Paragraphs 1 through 92 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

94. Defendants deny each and every material allegation in Paragraph 94 of Plaintiffs' Amended Complaint.

83. (SIC) Defendants deny each and every material allegation in Paragraph 83 (sic) of Plaintiffs' Amended Complaint.

**E. FIFTH CLAIM [UNFAIR BUSINESS PRACTICES RE DISCRIMINATION]  
Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants**

95. Defendants incorporate by reference their response to the allegations in Paragraphs 1 through 94 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

96. Defendants deny each and every material allegation in Paragraph 95 of Plaintiffs'



1 Amended Complaint.

2 97. Defendants deny each and every material allegation in Paragraph 97 of Plaintiffs'  
3 Amended Complaint.

4 98. Defendants deny each and every material allegation in Paragraph 98 of Plaintiffs'  
5 Amended Complaint.

6 **F. SIXTH CLAIM [UNFAIR BUSINESS PRACTICES]**

7 **Security Deposit Class Plaintiffs only v. Defendants**

8 99. Defendants incorporate by reference their response to the allegations in Paragraphs  
9 1 through 98 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

10 100. Defendants deny each and every material allegation in Paragraph 100 of Plaintiffs'  
11 Amended Complaint.

12 101. Defendants deny each and every material allegation in Paragraph 101 of Plaintiffs'  
13 Amended Complaint.

14 102. Defendants deny each and every material allegation in Paragraph 102 of Plaintiffs'  
15 Amended Complaint.

16 **G. SEVENTH CLAIM [UNLAWFUL SECURITY DEPOSIT]**

17 **Security Deposit Class Plaintiffs only vs. Defendants**

18 103. Defendants incorporate by reference their response to the allegations in Paragraphs  
19 1 through 102 of Plaintiffs' Amended Complaint, inclusive, as if fully set forth herein.

20 104. Defendants deny each and every material allegation in Paragraph 104 of Plaintiffs'  
21 Amended Complaint.

22 105. Defendants deny each and every material allegation in Paragraph 105 of Plaintiffs'  
23 Amended Complaint.

24 **VII. AFFIRMATIVE DEFENSES**

25 Defendants hereby assert the following affirmative defenses to Plaintiffs' Amended  
26 Complaint.

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State Claim)

As a first and separate affirmative defense, Defendants allege that Plaintiffs' Amended Complaint fails to state facts sufficient to constitute any cause of action against Defendants.

**SECOND AFFIRMATIVE DEFENSE**

(No Entitlement To Class Certification)

As a second and separate affirmative defense, Defendants allege that Plaintiffs' action is not entitled to class certification pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure and that the requirements for maintenance as a class action cannot be met.

**THIRD AFFIRMATIVE DEFENSE**

(Plaintiffs Not Proper Representatives)

As a third and separate affirmative defense, Defendants allege that Plaintiffs are not proper representatives of any purported class.

**FOURTH AFFIRMATIVE DEFENSE**

(Lack of Standing)

As a fourth and separate affirmative defense, Defendants allege that Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to challenge programs, services, assignments or actions for which they failed to apply, for which they were not denied or to which they were not subject.

**FIFTH AFFIRMATIVE DEFENSE**

(Moot)

As a fifth and separate affirmative defense, Defendants allege that some or all of Plaintiffs' claims are moot.

**SIXTH AFFIRMATIVE DEFENSE**

(Reasonable Accommodations Made)

As a sixth and separate affirmative defense, Defendants allege that they reasonably accommodate persons with handicaps and disabilities.

**SEVENTH AFFIRMATIVE DEFENSE**

(Printed Materials Not Discriminatory)

As a seventh and separate affirmative defense, Defendants allege that Defendants' printed materials, notices or statements with regard to the use of its dwellings do not communicate any discriminatory motive or purpose to any ordinary reader or listener.

**EIGHTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Administrative Remedies)

As an eighth and separate affirmative defense, Defendants allege that Plaintiffs' claims are barred, in whole or in part, to the extent they have failed to exhaust applicable administrative remedies.

**NINTH AFFIRMATIVE DEFENSE**

(Accommodation Sought Alters Nature of Business)

As a ninth and separate affirmative defense, Defendants allege that the modifications to Defendants' programs, services, policies, assignments, activities and procedures requested by Plaintiffs would fundamentally alter the nature of their business.

**TENTH AFFIRMATIVE DEFENSE**

(Accommodation Sought Would Cause Undue Hardship)

As a tenth and separate affirmative defense, Defendants alleges that the modifications to programs, services, policies, assignments, activities and procedures requested by Plaintiffs would cause an undue financial or administrative hardship on Defendants.

**ELEVENTH AFFIRMATIVE DEFENSE**

(No Denial of Meaningful Participation)

As an eleventh and separate affirmative defense, Defendants allege that Plaintiffs' claims are barred, in whole or in part, because Plaintiffs were not denied meaningful participation in nor denied the benefits of Defendants' programs, services, assignments or activities.

**TWELFTH AFFIRMATIVE DEFENSE**

(Non-Discrimination)

As a twelfth and separate affirmative defense, Defendants alleges that Plaintiffs' claims

1 are barred, in whole or in part, because Defendants' actions about which Plaintiffs complain were  
2 justified by legitimate, nondiscriminatory reasons.

3  
4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 (No Standing Under FHA)

6 As a thirteenth and separate affirmative defense, Defendants allege that Plaintiffs lack  
7 standing because they are unable to demonstrate a "pattern and practice" of discrimination under  
8 the Federal Fair Housing Act.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Defendant's Conduct Was Not Arbitrary)

11 As a fourteenth and separate affirmative defense, Defendants allege that their activities  
12 with respect to applicants or residents, if any, were privileged or otherwise justified, as such  
13 activities were proper, fair and legitimate business activities and/or business related reasons and  
14 were neither arbitrary, capricious, nor unlawful.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 (Defendant's Conduct Not Intentional)

17 As a fifteenth and separate affirmative defense, Defendants allege that the discriminatory  
18 conduct alleged by Plaintiffs, if any, was not intentional.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 (Meal Tray Policies Are A Reasonable Accommodation)

21 As a sixteenth and separate affirmative defense, Defendants allege that the guidelines  
22 regarding the use of meal trays are interpreted and applied so as to provide a reasonable  
23 accommodation to handicapped or disabled persons.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 (No Undue Hardship)

26 As a seventeenth and separate affirmative defense, Defendants allege that the guidelines  
27 regarding the use of meal trays do not impose an undue hardship on handicapped or disabled  
28 persons.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(No Disparate Impact)

As an eighteenth and separate affirmative defense, Defendants allege that the guidelines regarding the use of meal trays do not cause a disparate impact on any person.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Estoppel)

As a nineteenth and separate affirmative defense, Defendants allege that Plaintiffs' Complaint, and each purported cause of action contained therein, is barred by the doctrine of estoppel based on Plaintiffs' own conduct, acts, and omissions.

**TWENTIETH AFFIRMATIVE DEFENSE**

(Statutes of Limitation)

As a twentieth and separate affirmative defense, Defendants allege that Plaintiffs' Complaint is barred, in whole or in part, by the applicable statute(s) of limitation including but not limited to CCP §§ 337 and 343.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Defendant's Conduct In Compliance With California Law)

As a twenty-first and separate affirmative defense, Defendants allege that Defendants' activities with respect to applicants or residents, if any, were required, privileged or otherwise justified under California law.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Plaintiffs Not Qualified Disabled Persons)

As a twenty-second and separate affirmative defense, Defendants allege that Plaintiffs are not qualified individuals with a disability as they pose a significant risk or direct threat to the health and safety of themselves or others.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Plaintiffs Not Qualified Disabled Persons)

As a twenty-third and separate affirmative defense, Defendants allege that Plaintiffs' claims are barred, in whole or in part, because with or without reasonable accommodation,

1 Plaintiffs failed to meet the basic requirements of tenancy such as safety, rudimentary self-care  
2 and non-disruptive cohabitation with others.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 (No Compensatory Or Monetary Damages)

5 As a twenty-fourth and separate affirmative defense, Defendants allege that Plaintiffs'  
6 Complaint fails to state any claim for relief upon which compensatory or monetary damages may  
7 be awarded.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

9 (Full Access To Facilities)

10 As a twenty-fifth and separate affirmative defense, Defendants allege that at no time did  
11 Defendants' policies and procedures result in less than full access for handicapped or disabled  
12 persons at Defendants' facility.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 (No Liability For Employees Acting Outside Scope)

15 As a twenty-sixth and separate affirmative defense, Defendants allege, on information and  
16 belief, that to the extent any employee or agent of Defendants are shown to have acted outside the  
17 course of his or her duties, Defendants may not be held liable for such acts.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 (Actions Undertaken With Due Care And In Good Faith)

20 As a twenty-seventh and separate affirmative defense, Defendants allege that at all  
21 relevant times, Defendants and their agents or employees acted within the scope of their  
22 discretion, with due care and good faith fulfillment of their responsibilities in accordance with  
23 applicable statutes, rules, regulations, and established procedures and practices, within the bounds  
24 of reason under all circumstances known to them, and with the good faith belief that their actions  
25 comported with all applicable federal and state laws.

26 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

27 (Third Party Liability)

28 As a twenty-eighth and separate affirmative defense, Defendants allege that to the extent

1 Plaintiffs have suffered any injury, the injury is due in whole or in part to persons or forces other  
2 than Defendants.

3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 (Defendants Offer Lodging)

5 As a twenty-ninth and separate affirmative defense, Defendants allege that Redwood  
6 Retirement Residence is a residential retirement facility pursuant to Civil Code Section 1833 *et*  
7 *seq.* and not a residential rental property subject to Civil Code Section 1949 *et seq.*

8 **THIRTIETH AFFIRMATIVE DEFENSE**

9 (Residential Retirement Facility)

10 As a thirtieth and separate affirmative defense, Defendants allege that Redwood  
11 Retirement Residence is not licensed to provide the accommodations or level of care requested or  
12 needed by Plaintiffs, i.e., an assisted living facility subject to Health and Safety Code section  
13 1569 *et seq.*

14 WHEREFORE, Defendants pray as follows:

- 15 1. That Plaintiffs take nothing by this action;
- 16 2. That judgment be entered in Defendants' favor;
- 17 3. That Defendants recover their costs in this proceeding, including reasonable  
18 attorneys' fees; and
- 19 4. That the Court grant such other and further relief as it deems appropriate.

20 DATED: December 7, 2007

HANSON BRIDGETT MARCUS  
VLAHOS & RUDY, LLP

21  
22 By: /s/ Kurt A. Franklin

23 KURT A. FRANKLIN  
24 SARAH D. MOTT  
25 MOLLY A. LEE  
26 Attorneys for Defendants  
27 HARVEST REDWOOD RETIREMENT  
28 RESIDENCE, L.L.C., doing business as  
Redwood Retirement Residence,  
RETIREMENT RESIDENCE, L.L.C.; and  
HOLIDAY RETIREMENT CORP.